

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT IN AND FOR
UTAH COUNTY, STATE OF UTAH

PROVO RESERVOIR COMPANY, a	:	
corporation,	:	NO. 2888 CIVIL
	:	
Plaintiff,	:	
	:	PETITION OF PROVO RESERVOIR
-vs-	:	WATER USERS COMPANY
	:	
PROVO CITY, et al., T. F.	:	
WENTZ,	:	
	:	
Defendants.	:	

The petition of Provo Reservoir Water Users Company respectfully represents to the above entitled Court as follows:

1. That petitioner is a mutual water users corporation, organized and existing under and by virtue of the laws of the state of Utah.

2. That T. F. Wentz is now and has been for many years past the duly appointed, qualified and acting water commissioner appointed by this Court in the above entitled cause for the purpose of carrying out the provisions of the Decree entered in the above entitled matter.

3. That Provo Reservoir Company, a corporation of the state of Utah, is the plaintiff in the above entitled action, and that your petitioner herein is the successor in interest to said plaintiff of certain water rights known as stored waters, and waters transferred and brought from the Weber River water shed to the Provo River Water System, as is more specifically defined and set forth in said Decree.

4. That the stored water rights to which the said petitioner is successor in interest of said plaintiff^{are} are more specifically set forth in said Decree under the general headings of Classes "B", "C", and "F".

5. That in paragraph 120 of the final Decree entered in the above entitled matter it is provided as follows:

"It is further ordered, adjudged and decreed that the plaintiff and the defendants having the right to store~~x~~ water in their several reservoirs as hereinbefore stated, have the right to release said waters in the quantities and at such times as they may elect, and commingle the same with the waters of Provo River and then be taken out, less the losses by evaporation and seepage."

That it is further provided by paragraph 117 of said Decree as follows, to-wit:

"It is further ordered, adjudged and decreed, that the storage waters, the Ontario Drain Tunnel waters, and the waters diverted from the Weber River watershed, turned into and comingled with the waters of Provo River, shall bear each its respective loss by evaporation and seepage and shall bear each its respective proportion of the cost of distribution and administration of the orders of the Court and the Decree herein, and;

"The final determination and fixing of the quantity of water that should be deducted for loss in transmission of the stored waters, the Ontario Drain Tunnel waters, and the waters diverted from the Weber River watershed, turned into and comingled with the waters of the Provo River, is postponed until such time as observations and measurements will enable the Court to fix the same with reasonable certainty. The Court will therefore retain jurisdiction of this case for that purpose and at some future time, upon application of any party interested therein, will hear such evidence as may be available, and determine the amount of loss in transmission of such water. Pending such hearing and determination there may be deducted from the stored waters, four per cent of their volume, for loss by evaporation and seepage.

"That the Commissioner shall determine, when practicable, the quantity of loss by evaporation and seepage, of the waters in this paragraph referred to."

6. That the final Decree in said cause was made and entered on the 2nd day of May, A. D. 1921, and that since the entry of said Decree and up to the present time there has not been a final determination and fixing of the quantity of water that should be deducted for loss in transmission of said stored waters and the Ontario Drain Tunnel waters and the waters di-

verted from the Weber River watershed, which the owners of had the right to turn into said River and commingle with the waters thereof, and that by reason of the provisions of said paragraph 117 of said Decree it was, and now is, the duty of said water commissioner, pending the final determination and fixing the quantity of water to be so deducted, to deduct not to exceed four percent of the said waters for loss by evaporation and seepage.

7. That beginning with the 4th day of July, A. D. 1935, the petitioner, as the successor in interest of said Provo Reservoir Company, plaintiff herein, has been and now is diverting from its said storage waters into the said Provo River, in accordance with the rights granted by said decree; that said stored waters have been released, and now are being released from petitioner's storage reservoirs at the head of the said Provo River water system and were, and now are, commingled with the natural flow of said stream for the purpose of bringing said waters through said River system to the canal of said petitioner which diverts ~~again~~ from said River at a point on the river known as Heiselt's Dam near the mouth of Provo Canyon; that during the period since the 4th day of July, A. D. 1935, up to the present time, your petitioner is informed and believes, and therefore alleges on information and belief that the said T. F. Wentz, as Water Commissioner appointed under Decree of this Court, has deducted from the said storage waters of petitioner and of the waters from the Weber River watershed which petitioner has brought from the Weber River and commingled the same with the waters of Provo River, more than four percent of the volume of said stored waters and the waters diverted from

the Weber River watershed to make up losses by evaporation and seepage; that at times during said period, the deductions which have been made by said Commissioner from said waters have been as large as thirty-five percent thereof; that said Commissioner, notwithstanding the provisions of said Decree heretofore set forth, is at the present time deducting from said storage waters of petitioner more than four per cent of their volume to make up losses from evaporation and seepage, and that he threatens to continue to deduct from said storage waters owned as aforesaid by petitioner and commingled with the waters of said Provo River, more than four per cent of the volume of said waters to make up the loss by evaporation and seepage; that the conduct on the part of said Water Commissioner, as heretofore alleged, is in violation of the express terms of said Decree.

3. That stockholders of your petitioner corporation who are entitled to the distribution of the waters owned by petitioner, including said storage waters, are in the midst of an irrigation and growing season on their said farms, and that any interference with their right to the use of said waters in the volume as provided for in said Decree, is greatly to their damage; that at the present time their water supplies are not nearly sufficient to water the lands of said stockholders, and that the conduct of said Water Commissioner in depleting said storage waters by deducting more than he is permitted to deduct therefrom for seepage and evaporation is causing great loss and damage to the stockholders of your petitioner; that said damage, in the total amount thereof, is difficult to estimate; that there is at the present time an acute water shortage for irrigation purposes; that any delay in having said Water Commissioner comply with the

terms of said decree will greatly damage petitioner and its stockholders; that petitioner is entitled to have the time shortened in which said Commissioner shall be required to appear and show cause why he should not comply fully with the terms of said Decree relative to the transmission of said storage waters.

WHEREFORE, your petitioner prays that said Water Commissioner, T. F. Wentz, be ordered to appear before this Court at such time as the Court may appoint, and that the said T. F. Wentz as Commissioner be required to show cause why he should not immediately comply with the terms of said Decree relative to the transmission of said storage waters of your petitioner, and that at the conclusion of said hearing that he may be dealt with in such manner as may seem to the Court just and proper.

PROVO RESERVOIR WATER USERS COMPANY

By

R. J. Murdock

Petitioner

*W. Watkins and
A. R. Booth*

Attorney for Petitioner

STATE OF UTAH)
COUNTY OF UTAH) SS.

R. J. Murdock, being first duly sworn, deposes and says: That he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on information and belief, and as to such matters that he believes the same to be true; that he is an officer of the petitioning corporation, to-wit: Secretary and Treasurer, and that this verification is made for and in behalf of said petitioner.

R. J. Murdock

Subscribed and sworn to before me this 16th day of August, A. D. 1935.

Alfred L. Booth
Notary Public, Residing at
Orem, Utah

